

REMARKS/ARGUMENTS

The present Response is being filed in reply to the Office Action dated September 22, 2005. A petition for a one month extension of time, including the associated fee, are filed herewith to extend the period of response to and including January 23, 2006. In addition, enclosed please find a request for a one-month extension of time. Please charge any fees which may be due to Deposit Account No.10-0750/DEP5156/DAL, but do not include any payment of issue fees.

By the present amendment, claims 9, 11, and 24 are canceled without prejudice and claims 39-40 have been added. Claims 1, 10, 22 and 35 are amended. Claims 1-8, 10, 12-23, and 25-40 are pending in the application. Support for the new claims can be found throughout the specification and drawings, including the claims as originally filed. No new matter has been added. The amendment/cancellation of claims should in no way be construed to be an acquiescence to any of the rejections. The amendment/cancellation of the claims is being made solely to expedite prosecution of the above-identified patent application. Applicants reserve the option to further prosecute the same or similar claims in the present or subsequent patent applications.

Objection to Drawings

The Office Action objected to drawings for failing to show every feature of the invention specified in the claims.

By the present amendment, Applicants submit a new drawing sheet (Sheet 5/10) including new FIGURES 5B and 5C to show the first and second bore axes intersecting at a point on a side of the plate proximal to the first and second vertebrae (FIG. 5C) and the first and second bore axes being parallel to one another and oriented at an angle other than perpendicular to a longitudinal axis of the plate (FIG. 5B). Applicants, further submit a revised drawing sheet (Sheet 4/10), in which FIG.5 is amended to FIG. 5A.

In addition, Applicants submit formal drawings in conjunction with this Amendment and Response.

Rejection of Claims under 35 U.S.C. § 102(b)

The Office Action rejected claims 1, 2, 4-8, 11-13, 15, 16, 19, 22, 23, 26, and 35-38 under 35 U.S.C. § 102(b) as being anticipated by Jackowski et al (WO 00/22999, corresponding to U. S. Pat. 6,565,571). Applicants respectfully traverse the rejections based on the above amendments and following arguments.

By the present amendment, claim 1 is amended to include the subject matter of canceled dependent claim 9. In particular, claim 1 is amended to recite that at least one of the second section and the first section of the plate is adjustable along a longitudinal axis of the plate with respect to the other section. Jackowski fails to disclose a spinal fixation plate with at least one of a second section and a first section of the plate that is adjustable along a longitudinal axis of the plate with respect to the other section. Accordingly, Applicants request that the rejection of claim 1, and claims 2, 4-8, 12-13, 15, 16, and 19 dependent thereon, under 35 U.S.C. § 102(b) be withdrawn.

Claim 11 has been canceled rendering moot the rejection of claim 11 under 35 U.S.C. § 102(b).

By the present amendment, Claim 22 is amended to include the subject matter of canceled dependent claim 24. In particular, claim 22 is amended to recite that at least one of the second section and the first section of the plate is adjustable along a longitudinal axis of the plate with respect to the other section. Jackowski fails to disclose a spinal fixation plate with at least one of a second section and a first section of the plate that is adjustable along a longitudinal axis of the plate with respect to the other section. Accordingly, Applicants request that the rejection of claim 22, and claims 23, and 26 dependent thereon, , under 35 U.S.C. § 102(b) be withdrawn.

By the present amendment, claim 35 has been amended to recite that at least one of the second section and the first section of the bone plate is adjustable with respect to the other section along a longitudinal axis of the plate. Jackowski fails to disclose a spinal fixation plate having at least one of a second section and a first section of the plate that is adjustable with respect to the other section along a longitudinal axis of the plate. Accordingly, Applicants request that the rejection of claim 35, and claims 36-38 dependent thereon, under 35 U.S.C. § 102(b) be withdrawn.

Rejection of Claims 1-38 under 35 U.S.C. § 103(a)

The Office Action rejected claims 1-38 under 35 U.S.C. § 103(a) as being unpatentable over Wagner et al (U.S. Pat. 6,454,769) in view of Brace et al (U.S. Pat. 6,235,033), Jackowski et al (U.S. Pat. 6,565,571), Sevrain (U.S. Pat. Pub. 2003/0229348), and LeHuec et al (U.S. Pat. 6,793,658). Applicants respectfully traverse these rejections based on the above-amendments and the following arguments.

By the present amendment, claims 9, 11, and 24 have been canceled, rendering moot the rejection of claims 9, 11, and 24 under U.S.C. § 103(a).

Claim 1 and claims 2-8, 10, and 12-21

By the current amendment, claim 1 has been amended to include the subject matter of canceled dependent claim 9. In particular, claim 1 is amended to recite that at least one of the first section and the second section is adjustable along a longitudinal axis of the plate with respect to the other section. The Office Action admits that Wagner fails to disclose at least one of the first section and the second section of the plate having a canted section, as recited in independent claim 1. Nor does Wagner disclose a plate having at least one of a first section and a second section that is adjustable along a longitudinal axis of the plate with respect to the other section, as recited in independent claim 1. The Office Action asserts that it would have been obvious to modify the Wagner plate into a two-piece, dynamic configuration as taught by Sevrain. Applicants respectfully disagree.

Applicants submit that one of ordinary skill in the art would have no motivation to combine the teachings of Sevrain with the teachings of Wagner. Wagner discloses a bone plate system including one or more midline boreholes 22 for receiving screws 24 for securing the bone plate to the graft positioned between the vertebra that the bone plate is attached to. See col. 5, lines 15-25, and 33-52. Thus, Wagner teaches that, when the Wagner plate is used with a bone graft, the plate may be connected to the bone graft as well as the adjacent vertebrae. Modifying the Wagner plate to have at least one of a first section and a second section of the plate that is adjustable along a longitudinal axis of the plate with respect to the other section for the reasons proposed in the Office Action – to eliminate stresses due to graft contraction when the plate is used in conjunction with a graft -- would be contrary to the teaching of Wagner. If Wagner were so

modified, the plate would no longer be connectable to the bone graft because to do so would inhibit one section from being adjustable relative to the other section of the plate. Applicant also notes that in the only embodiment of Sevrain in which a bone graft is connected to the plate (see Fig. 4), the plate is a rigid plate in which that first section and the second section of the plate are not adjustable with respect to one another. Accordingly, one of ordinary skill in the art would not be motivated to modify Wagner to have at least one of a first section and a second section that is adjustable along a longitudinal axis of the plate with respect to the other section, as recited in independent claim 1. For at least this reason, Applicants request withdrawal of the rejection of independent claim 1, and claims 2-8, 10, 12-21 dependent thereon, under 35 U.S.C. § 103(a).

Claims 22, 23, 25, and 26

By the current amendment, independent claim 22 has been amended to include the subject matter of cancelled dependent claim 24. In particular, independent claim 22 has been amended to recite a spinal fixation plate having at least one of a first section and a second section that is adjustable along a longitudinal axis of the plate with respect to the other section. Applicants submit that the rejection of claim 22 be withdrawn for the same reasons set forth above in connection independent claim 1. In particular, Applicants submit that one of ordinary skill in the art would not be motivated to modify Wagner to have at least one of a first section and a second section that is adjustable along a longitudinal axis of the plate with respect to the other section, as recited in independent claim 22. For at least this reason, Applicants request withdrawal of the rejection of independent claim 22, and claims 23, 25, and 26 dependent thereon, under 35 U.S.C. § 103(a).

Claim 27, and dependent claims 28-34

Claim 27 recites a spinal fixation plate having a first section having at least one bore, a second section having at least one bore, at least one of the second section and the first section being adjustable with respect to the other section along a longitudinal axis of the plate and a polyaxial bushing mounted in at least one bore. Applicants submit that the rejection of claim 27 be withdrawn for the same reasons set forth above in connection independent claim 1. In particular, Applicants submit that one of ordinary skill in the art would not be motivated to

modify Wagner to have at least one of a first section and a second section that is adjustable along a longitudinal axis of the plate with respect to the other section, as recited in independent claim 27. For at least this reason, Applicants request withdrawal of the rejection of independent claim 27, and claims 28-34 dependent thereon, under 35 U.S.C. § 103(a).

Claim 35, and dependent claims 36-38

Claim 35 is amended to recite a spinal fixation plate having at least one of a second section and a first section of the plate that is adjustable with respect to the other section along a longitudinal axis of the plate. Applicants submit that the rejection of claim 35 be withdrawn for the same reasons set forth above in connection independent claim 1. In particular, Applicants submit that one of ordinary skill in the art would not be motivated to modify Wagner to have at least one of a first section and a second section that is adjustable along a longitudinal axis of the plate with respect to the other section, as recited in independent claim 35. For at least this reason, Applicants request withdrawal of the rejection of independent claim 35, and claims 36-38 dependent thereon, under 35 U.S.C. § 103(a).

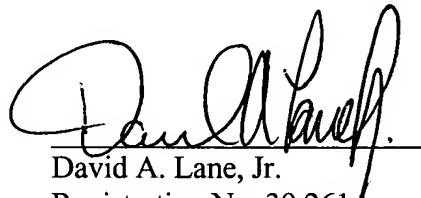
New Claims 39-40

By the present amendment, Applicants add new independent claim 39 and claim 40 dependent thereon. Claim 39 is directed to a spinal fixation plate having a first section having at least one bore and a second section having at least one bore, at least one of the first section and the second section having a canted section oriented at a cant angle to at least one other section of the at least one of the first section or the second section, the cant angle being selected to correspond to a geometry of at least one of the first vertebrae and the second vertebrae and at least one opening formed in the plate between lateral side edges of the plate and between the first and second section to permit visualization of a graft positioned between the vertebrae. Applicants submit that the prior art of record, including Jackowski, fails to disclose the subject matter of new claim 39, and claim 40 dependent thereon.

Conclusion

In view of the remarks set forth above, it is respectfully submitted that this application is in condition for allowance. Accordingly, allowance is requested. If there are any remaining issues or the Examiner believes that a telephone conversation with the Applicants' attorney would be helpful in expediting the prosecution of the application, the Examiner is invited to call the undersigned at (508) 880-8488.

Respectfully submitted,



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